

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20641

Application 29514 of Thomas E. Burgess

P.O. Box 282, St. Helena, CA 94574

filed on July 5, 1989, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Unnamed Stream

Burton Creek thence

Maxwell Creek thence

Pope Creek thence

Putah Creek thence

Yolo Bypass

2. Location of point of diversion:

40-acre subdivision
of public land survey
or projection thereof

Section

Town-
ship

Range

Base
and
Meridian

Reservoir One
North 348,150 feet and East 1,871,800 feet
by California Coordinate System, Zone 2

SE $\frac{1}{4}$ of NE $\frac{1}{4}$

19

9N

5W

MD

County of Napa

3. Purpose of use:

4. Place of use:

Section

Town-
ship

Range

Base
and
Meridian

Acres

Irrigation

SE $\frac{1}{4}$ of NE $\frac{1}{4}$

19

9N

5W

MD

25

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 18 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year. (0000005)

6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

7. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

8. Construction work shall be completed by December 31, 1995. (0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1996. (0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

14. Permittee shall comply with the following provisions which are derived from the agreement titled "Revegetation Plan for Thomas Burgess" between permittee and Department of Fish and Game executed on October 16, 1991 and filed with the State Water Resources Control Board:

Revegetation shall take place within one year from the date of permit issuance. Permittee shall provide for a 75 percent survival rate of all plants for a three year period. Permittee shall also provide the Department of Fish and Game with a status report of said revegetation three years after completion of the planting and shall replace plants as needed to assure the survival rate of 75 percent.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit. (0000024)

15. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe or alternative facility to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe or alternative facility has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

16. Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoirs.

Permittee shall record the staff gage readings on or about October 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

The State Water Resources Control Board may require the release of water which cannot be verified as having been collected to storage prior to October 1 of each year.

Permittee shall allow Pope Valley Union School District and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir. (0070047)
(0100047)

17. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resource as to safety, construction for the enlarged dam under this permit shall not be commenced until the Department has approved the plans and specifications for the dam. (0360048)

18. Whenever the prior storage rights of Pope Valley Union School District (under License 11413 issued pursuant to Application 23696) are not satisfied by May 1 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights. Permittee shall not be obligated to release water in the reservoir(s) below the previous November 1 staff gage reading unless permittee has withdrawn water from the reservoir(s) for consumptive purposes since November 1. (0000051)

19. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in State Water Resources Control Board Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220087)

20. Permittee shall monitor and maintain the erosion control measures outlined in the soil conservation plan prepared for vineyard development entitled "Soil Conservation Plan for the Burgess Vineyard Development at 1550 Ink Grade Road" and also the improvements recommended by Napa Valley Vineyard Engineering, Inc., in a letter dated February 7, 1991. Both documents are on file with the State Water Resources Control Board. (0430500)

21. Habitat Enhancement: In addition to the revegetation plan agreed upon by the Department of Fish and Game and the permittee, permittee shall establish and/or enhance plant species along the fence line surrounding the vineyard and around the reservoir. For establishment to be considered successful, each plant must be self-sustaining for at least three years. If mortality causes the number of replacement plants to decline below the mitigation percentage (75%), new plants will be planted until the minimum 75% survival is obtained. Monitoring results stating the success of the revegetation will be submitted annually to the State Board, Division of Water Rights. (0490500)

Browse Habitat:

- a. Browse species to be planted and/or enhanced shall be composed of the following species: scrub oak, toyon, mountain mahogany, wild plum, honeysuckle, buckeye, elderberry, quailbush, madrone, or redbud.
- b. Plants will be located every 10 feet along the vineyard fence line. Slow release fertilizer will be added, if needed.
- c. Plants will be irrigated during the growing season with a drip irrigation system. The irrigation system will apply at a minimum, the amount and frequency of water needed to promote adequate root growth, thus allowing the plants to survive and grow without supplemental water after 3 years.
- d. Herbicides, weed mats, browse repellents, and herbivore protection kits will be used, if necessary, to control competitive weeds, animal browse, or maintain plant vigor.

Riparian Habitat:

- a. Fifty willow cuttings, 50 cottonwood saplings, and 50 elderberry seedlings shall be planted around the reservoir. Willow and cottonwood can be planted close to the mean water line. Elderberry should be planted above the high water line, but close enough to have slightly damp soil into summer.
- b. Plants will be planted in irregular spacings.
- c. Herbicides, weed mats, browse repellents, and herbivore protection kits will be used, if necessary, to control competitive weeds, animal browse, or maintain plant vigor. (0400500)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

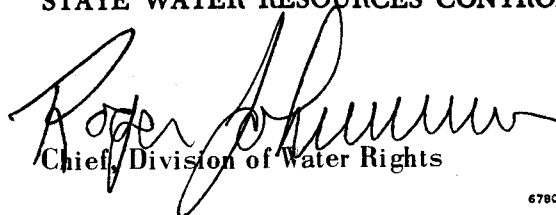
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: **OCTOBER 16 1992**

STATE WATER RESOURCES CONTROL BOARD


Chief, Division of Water Rights